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December 1, 2005

Via Hand Delivery and Electronic Mail

Luly Massaro, Commission Clerk
Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

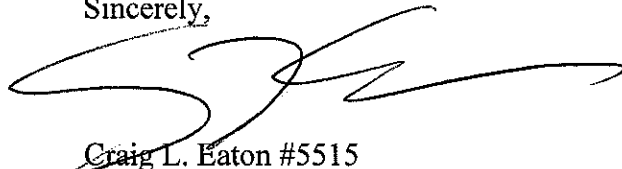
Re: Docket No.: 3692; Surrebuttal Testimony of Cox Rhode Island Telcom, LLC

Dear Luly:

Enclosed for filing in the above-referenced Docket is an original and nine copies of the surrebuttal testimony of F. Wayne Lafferty on behalf of Cox Rhode Island Telcom, LLC.

If you have any questions regarding this filing, please give me a call.

Sincerely,



Craig L. Eaton #5515
Attorney for Cox Rhode Island Telcom, LLC

Enclosure

cc: Service List (with enclosure) (via electronic mail and regular U.S. Mail, postage prepaid)

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SURREBUTTAL TESTIMONY
OF
F. WAYNE LAFFERTY
ON BEHALF OF
COX RHODE ISLAND TELCOM, L.L.C.
December 1, 2005

1 **A. IDENTIFICATION AND QUALIFICATION OF WITNESS**

2 **Q. What is your name and business address?**

3 A. My name is F. Wayne Lafferty and my business address is 2940 Cedar Ridge Drive,
4 McKinney, Texas 75070.

5
6 **Q. Are you the same F. Wayne Lafferty who presented direct testimony on behalf of**
7 **Cox Rhode Island Telcom L.L.C. ("Cox") in this proceeding?**

8 A. Yes.
9

10 **B. PURPOSE OF SURREBUTTAL TESTIMONY**

11 **Q. Mr. Lafferty, what is the purpose of your Surrebuttal Testimony?**

12 A. My Surrebuttal Testimony provides the Rhode Island Public Utilities Commission
13 ("Commission") with Cox's response to the rebuttal testimonies of Verizon witnesses
14 Vasington, O'Brien and Kenney. Specifically I will correct several inaccuracies about
15 the Verizon testimony, clarify some of Cox's proposals in this proceeding and comment
16 on some of the issues raised by the Verizon witnesses.

17
18 **Q. Do you have any general comments about the Verizon rebuttal testimony?**

19 A. Yes. For some reason, Verizon seems intent on transforming some relatively simple and
20 discrete issues raised by Cox into endless, complex and confusing testimony. Of the
21 complete Alternative Form of Regulation ("AFOR") plan, Cox basically has five discrete
22 suggestions. These are easily categorized as:

- 23
24 1. Applying the price floor to promotions;
25

2. Applying the price floor to the regulated portion of any bundled service;
3. Applying the same rate de-averaging standards as now apply to business customers pursuant to the current Verizon plan;
4. Placing a time limit on the AFOR plan; and
5. Allowing competitors to request the Commission and/or Division to perform price floor cost studies.

After distilling the Verizon testimony, it appears as if Verizon has very little disagreement with these suggestions. In fact, the only real area of disagreement appears with applying the price floor to promotions. Furthermore, in several places, Verizon digresses into a discussion about the regulatory requirements for Cox and other competitors. At times it appears Verizon is even addressing regulation of cable television services. This proceeding is about the expansion of Verizon's current regulatory framework to its residential regulated retail services business; a change which must not be taken lightly. My surrebuttal testimony will attempt to return the focus of this proceeding to its rightful place. It is important to address the fairly narrow, but very important recommended modifications to Verizon's proposed AFOR plan which Cox has proposed.

C. SUMMARY OF SURREBUTTAL TESTIMONY

Q. Please provide a summary of your Surrebuttal Testimony.

A. Verizon's proposed AFOR plan significantly increases the level of regulatory flexibility by expanding the current level of pricing flexibility from business to residential services. The number of customers and services subject to pricing flexibility will increase dramatically. Cox is not opposed to most aspects of Verizon's proposed AFOR;

1 however, certain safeguards must be in place to ensure the competitive environment
2 which this Commission has worked hard to nurture is not endangered to the detriment of
3 consumers. The discrete modifications recommended by Cox are designed with this goal
4 in mind.

5
6 Unfortunately, many of Verizon's arguments in its rebuttal testimony are based on
7 inaccurate statements, a misunderstanding of Cox's recommendations and/or an attempt
8 to broaden and confuse this proceeding into a debate about the regulation of competitors
9 and in some cases the cable television market. My Surrebuttal Testimony is designed to
10 set the record straight and refocus this proceeding on the Verizon AFOR proposal.

- 11
- 12 • Verizon presents several arguments which require clarification: The references
13 in Ms. O'Brien's testimony to the Commission's Order No. 12605 are
14 inconsistent with Verizon's promotional tariff and incomplete. Cox is not
15 opposed to the six-month time limit for promotions; however, Verizon's
16 promotional tariff does not specify the six month limit nor does it include the
17 other requirements of Order 12605. Assuming Order 12605 is still applicable,
18 the treatment of promotions in the AFOR should reflect all of the
19 requirements of the order. In addition, assuming the six month limit is
20 applicable, this limit alone does not eliminate the need for the price floor test
21 to apply to promotions as customers should still be protected from the long-
22 term harm from anti-competitive pricing.
 - 23 • Verizon Witness Vasington appears to be confusing the marketing of
24 promotions and bundles with the economics of pricing when he refers to
25 foregone revenues during promotional periods. To avoid promotions being

1 used as anti-competitive pricing vehicles, the total impact of the promotion
2 must meet the price floor requirements.

- 3 • Verizon appears to have misunderstood Cox's recommendation regarding
4 bundles. Cox is not asking the Commission to apply the price floor test or
5 tariff rules to services of which have been deregulated or are not under its
6 jurisdiction. Cox only recommends the price floor test apply to all the
7 regulated retail services in a bundle or promotion.
- 8 • Mr. Kenney incorrectly states that Cox's basic rate is \$21.95; the correct rate
9 is \$19.95 when the \$2.00 optional DA calling package is removed.
- 10 • In an attempt to suggest Cox supports full regulatory parity between
11 competitors and Verizon, Mr. Vasington misrepresents a portion of a speech
12 given by Jim Robbins, President and CEO of Cox. Mr. Robbin's speech
13 addresses competition and regulation in the video market, an area which
14 Verizon is committed to enter. The video market is very different than the
15 residential regulated retail services market.
- 16 • Mr. Kenney's rebuttal testimony suggests Cox's recommendations regarding
17 rate de-averaging are designed to limit Verizon's ability to offer statewide
18 uniform rates for basic or any other services. The exact opposite is true. Cox
19 supports the Commission's policy to limit rate de-averaging to situations
20 specifically approved by the Commission upon a showing of reasonableness
21 by Verizon. The AFOR plan should specifically include this Commission
22 policy as it appears Cox and Verizon are in agreement about the importance of
23 uniform pricing.
- 24 • Mr. Vasington's testimony suggests VoIP is a facilities-based service.
25 However, VoIP is actually a technology and many VoIP providers have little
26 or no network facilities. The use of VoIP technology for telecommunications

1 services relies on the end-user customer's existing broadband network
2 connection which in many cases is DSL service provided by Verizon.

- 3 • Verizon's rebuttal testimony contains several references to the level of
4 regulatory and pricing flexibility for competitors and cable television
5 providers which are all irrelevant to this proceeding. The purpose of Docket
6 No. 3692 is to establish a new AFOR for Verizon not to debate the regulation
7 of other companies or their products. In some cases the examples cited by
8 Verizon are not even within the jurisdiction of this Commission.

9
10 Mr. Vasington suggests the Commission look at issues from the viewpoint of
11 customers, and Cox agrees. However, when viewed through the eyes of
12 customers, Verizon is seen as a dominant provider with a large national network
13 about to get much larger through the acquisition of its competitor, MCI.
14 Customers are the parties most impacted by the proposed AFOR plan. Cox's
15 recommended changes are designed to provide Verizon a large degree of pricing
16 flexibility while making sure the competitive market continues to flourish so
17 consumers will have alternatives for local telecommunications services.

18
19 **D. PROMOTIONS AND BUNDLES FOR REGULATED RETAIL**
20 **SERVICES SHOULD BE SUBJECT TO THE PRICE FLOOR**
21 **REQUIREMENTS**

22 **Q. In the Rebuttal Testimony of Teresa L O'Brien,¹ the witness points out that Verizon**
23 **is not required to file tariffs for bundles which include non-regulated services. Is**

¹ Hereinafter referred to as the "O'Brien Rebuttal."

1 Cox recommending the Commission require Verizon to file tariffs for these
2 services?

3 A. No. Cox's recommendation for promotions and bundles is not about tariff requirements;
4 no changes to current tariff requirements are proposed. Cox is merely recommending
5 that any promotion or bundle which includes regulated retail services should be subject to
6 the price floor requirements for the regulated retail services. Contrary to the Rebuttal
7 Testimony of Paul B. Vasington² on page 10, lines 2-4 and the O'Brien Rebuttal on page
8 9, lines 13-16, Cox understands that certain services are outside the jurisdiction of the
9 Commission and the terms of the AFOR plan. However, some promotions or bundles
10 include a discount for the regulated retail services when compared to what Mr. Vasington
11 calls the *a la carte* price.³ The discounted price for the regulated portion of these
12 promotions and/or bundles should be subject to the price floor requirements.

13
14 **Q. Does Verizon currently file tariffs for bundles which include regulated services?**

15 A. Yes. For example, Section 15.11 of Verizon's PUC RI Tariff No. 15 includes the
16 "Verizon Regional Package Unlimited" service package. Section 15.11.2 (D) provides an
17 additional discount on the Verizon Regional Package Unlimited package for customers
18 that subscribe to Verizon Online Internet access, ONE-BILL with Verizon Wireless, or
19 DIRECTV purchased through Verizon. This package is clearly a bundle which includes
20 services other than regulated retail services, and the associated discount is clearly
21 applicable to the regulated retail services and in the tariff. Cox does not recommend any
22 changes to the tariff requirements; however, the complete bundle of regulated retail
23 services, including the discount provided in Section 15.11.2 (D) of Verizon's tariff
24 should meet the price floor requirement.

² Hereinafter referred to as the "Vasington Rebuttal."

³ Refer to Vasington Rebuttal, page 9, line 11.

1
2 **Q. Does Verizon appear to agree with Cox's proposal?**

3 A. Yes. On page 8, lines 19-22 of the O'Brien Rebuttal, she states the following:
4 ... the underlying regulated service packages contained within those
5 bundles are tariffed, and a cost certification is provided which addresses
6 any concerns raised by Cox.

7 Ms. O'Brien, on page 9, line 1, uses the Regional Package Unlimited as an example of a
8 package for which cost certification was provided.

9
10 Mr. Vasington, on page 7, lines 17-18 of his rebuttal testimony states the following:
11 Currently, price floor requirements already apply to the regulated portion
12 of Verizon' RI service bundles.

13 On page 9, line 22 – page 10, line 2, he states the following:

14 As noted, the current price floor requirement for bundles applies only to
15 regulated services. Verizon RI is not seeking any change to that
16 requirement in its Plan.

17 As long as the price floor requirement and cost certification includes all of the costs and
18 discounts associated with the regulated retail services or regulated retail services portion
19 of the bundles, then the price floor test is met as Cox recommends. This practice which
20 Mr. Vasington states is currently applied should not change. It appears as if Verizon and
21 Cox agree on this issue. This is, therefore, a simple matter of ensuring that the AFOR
22 reflects this agreement.

23
24 **Q. Should the same requirement apply to promotions?**

25 A. Yes. As Mr. Vasington points out on page 6, lines 16-18, promotions are designed to
26 forego revenues in the short-term to convince customers to take service and increase total
27 revenues to Verizon. To avoid promotions being used as anti-competitive pricing
28 vehicles, the total impact of the promotion must meet the price floor requirements. Mr.
29 Vasington admits on page 6, lines 15-18 that promotions may not cover cost. The price

1 floor rule is designed to prevent this type of situation and should be applied to
2 promotions. This is, therefore, a simple matter of ensuring that the AFOR reflects this
3 agreement.
4

5 **Q. In your direct testimony you mentioned that promotions might last indefinitely and**
6 **could be construed to replace regular tariff products. On page 7, lines 13-14, of the**
7 **O'Brien Rebuttal, she cites the Commission's Order No. 12605 in Docket No. 1896**
8 **which she suggests restricts the length of any promotion to six months. Does this**
9 **order address Cox's concern with the potential for unlimited promotions?**

10 A. Not completely. First of all, the discussion of this issue in my direct testimony was based
11 on Section 1.10.1 of Verizon's PUC RI Tariff No. 15 which is attached as Exhibit FWL-
12 SR1 to my Surrebuttal Testimony. A portion of Subsection A of this tariff, which
13 became effective on April 8, 2001 subsequent to the issuance of Order No. 12605, states
14 the following:

15 The time periods, locations, tracking plans and terms and conditions
16 applicable to each promotional program are provided to the PUC at the
17 time of notification.

18 There is no mention of a six month limitation in the Verizon tariff.

19 While a six month limitation on the length of a promotion is appropriate, the length of the
20 promotion itself does not eliminate the importance of applying the price floor to
21 promotions. The price of the total package the customer must buy includes adequate
22 margin to cover the cost of the service. Therefore, common sense suggests prices should
23 cover cost and the application of the price floor to promotions is appropriate.
24

25 **Q. On pages 4 and 5 of his rebuttal testimony, Mr. Vasington claims state and federal**
26 **laws make it impossible for Verizon to engage in predatory pricing. Do you agree?**

1 A. Not completely. That argues that merely because a law exists, no person or entity will
2 break it; that makes no sense. In theory, predatory pricing would result in all competitors
3 being driven from the market place which may or may not occur if Verizon is permitted
4 to price promotions and bundles below cost. However, for a predatory pricing strategy to
5 be successful, all competitors would not have to be driven out of the market forever. As
6 noted in my direct testimony, Verizon's Rhode Island's operations are part of Verizon
7 Corporation, a dominant national carrier with operations throughout the United States.
8 Verizon Corporation's operations include wireless services and the use of VoIP
9 technology, video services from a third-party, and, soon, video services over its own
10 network. Shortly, Verizon Corporation's market reach will be increased significantly
11 through the acquisition of the network and customers of its former competitor, MCI.
12 Many of the sources of competition which Verizon cites as competition are current lines
13 of business for Verizon and/or its affiliates. This type of market dominance through both
14 vertical and horizontal integration provides Verizon the power to sustain below cost
15 pricing for a long time to the detriment of the competitive marketplace. Whether Verizon
16 is able to drive all its competitors completely out of the market through such a strategy is
17 not certain at this point. However, this Commission has worked hard to establish policies
18 designed to encourage competition, and it would be inappropriate to throw all that work
19 out the window by creating the environment for the incumbent carrier to sustain below
20 cost predatory pricing for regulated retail services regardless of whether every competitor
21 were completely driven from the market in Rhode Island.

22
23 **Q. If promotions are limited to six months, would it not be appropriate for the**
24 **Commission to allow Verizon to sacrifice profits for that period of time?**

25 A. No. First of all, Verizon Corporation overall would most likely not be hurt financially by
26 a promotion which allows customers to purchase regulated retail services below cost

1 because it has opportunities through other services in Rhode Island and in other parts of
2 the country to recoup such losses at any time. Pursuant to Order No. 12605, any single
3 promotional program would be restricted to six months. However, nothing prevents
4 Verizon from introducing a new promotional program immediately after the six months
5 which is slightly different or requesting an extension of a current promotion. Promotions
6 can be designed to appear the same to customers.

7
8 **Q. Are there other aspects of Order No. 12605 which you would like to address?**

9 A. Yes. Ms. O'Brien appears to have selected one aspect of this order to rebut Cox's
10 recommendations about promotions and the potential for Verizon's promotions to last
11 indefinitely. As I have pointed out, even in light of Order No. 12605, customers may
12 perceive promotions as lasting for much more than six months. However, Order No.
13 12605 also contains other important provisions. First of all, the order addresses a specific
14 promotional tariff which is different than the current effective promotional tariff which
15 was issued several years after Order No. 12605. Second, under the order the Commission
16 must be provided thirty days advance written notice of any promotion. Third, services
17 offered under any promotional program must be terminated at the end of the program
18 unless the customer agrees otherwise. Thus, after six months, customers must either
19 affirmatively agree to an extension of the service or the service must be terminated.
20 Lastly, Verizon must file a full accounting of each promotional program with the
21 Commission within sixty days of the end of the program. Assuming Order No. 12605 is
22 still applicable to promotions under the currently effective Verizon promotions tariff, all
23 aspects of the tariff must be enforced, not just the time limit. Unless the Commission
24 specifically determines otherwise, Verizon's AFOR plan should specifically incorporate
25 the provisions of the entire order.

1
2 **Q. On page 9, line 6-9 of the Vasington Rebuttal, the witness suggests Cox's concern**
3 **with protecting customers is misguided. How would you respond?**

4 A. Customers benefit from a robustly competitive marketplace. With all due respect for Mr.
5 Vasington, Cox is not advocating a restriction on the availability of bundles.⁴ Cox fully
6 supports the ability for Verizon (or any other carrier) to bundle products because some
7 customers prefer to receive their retail telecommunications services in this manner.
8 However, if Verizon is allowed to engage in anti-competitive activities such as below
9 cost pricing, competition is hurt and thus customers are hurt. Cox agrees with Mr.
10 Vasington that "the Commission should view bundles in the same manner as consumers
11 [do]."⁵ Regulation should not restrict the ability for Verizon (or any other carrier) to
12 offer bundles in a non-discriminatory manner. However, anti-competitive pricing can
13 ultimately hurt customers; thus the price floor requirement is established to prevent anti-
14 competitive pricing and protect customers. Cox agrees with Mr. Vasington that the
15 payment of a different price for a bundle as compared to the a la carte price is not on its
16 own anti-competitive, and in fact could benefit certain customers. This practice only
17 becomes anti-competitive when the price of the bundle is below cost whether the bundle
18 be a regular offering or a promotional offer. The application of the price floor
19 requirement to regulated retail services eliminates the possibility for anti-competitive
20 pricing while still allowing customers to benefit from purchasing a package of services at
21 the best available price.
22
23

⁴ Id, page 9, lines 14-16.

⁵ Id, page 9, lines 12-13.

E. RATE DE-AVERAGING SHOULD COMPLY WITH THE GUIDELINES
OUTLINED BY THE COMMISSION IN ORDER NO. 3445

Q. On page 4, lines 2-3 of the Rebuttal Testimony of Mr. Robert J. Kenney⁶, the witness claims Cox's proposal regarding rate de-averaging would prevent Verizon from equalizing its rates throughout Rhode Island. Do you agree with his characterization of Cox's recommendation?

A. No. To the contrary, Cox supports the ability for Verizon to charge a statewide uniform rate.

Q. What specifically does Cox recommend regarding rate de-averaging?

A. Cox recommends that the Commission continue the policy it established in Order No. 3445. That policy was stated as follows in Order No. 3445:

Accordingly, if VZ-RI files tariffs to geographically deaverage retail rates that were uniform statewide or within a particular calling area, under the PRSP,⁷ VZ-RI must rebut the presumption that the proposed rates do not constitute improper discrimination among similarly situated customers. This presumption may prove particularly difficult to rebut if the proposed geographically deaveraged rates affect residential customers.⁸

Application of this policy would not impact existing rates which the Commission has approved to be de-averaged. In addition, this policy would not prevent Verizon from offering services based on a statewide uniform rate, the type of flexibility Mr. Kenney suggests would be appropriate. All Cox is asking the Commission to do is include its existing policy, which does not appear to be controversial, regarding rate de-averaging in the AFOR plan.

⁶ Hereinafter referred to as the "Kenney Rebuttal."

⁷ Price Regulation Successor Plan for New England Telephone approved by the Commission in 2000.

⁸ March 31, 2003 Report and Order in Docket No. 3445 ("March 31, 2003 Order"), page 56.

1 **Q. In Order 3445, the Commission singled out the importance of the implications of de-**
2 **averaging on residential customers. Why is that concern especially applicable in**
3 **this proceeding?**

4 A. Verizon's proposed AFOR plan largely represents the extension of Verizon's current
5 AFOR as it applies to business customers to residential services. Therefore, the customer
6 group which the Commission specifically single-out for comment in Order No. 3445 is
7 implicated significantly by the revised AFOR plan. The easiest way to provide protection
8 against price discrimination which rate de-averaging might represent is to memorialize
9 the Commission's existing policy in the AFOR plan as recommended. Unless Verizon is
10 proposing the Commission change its stated policy regarding rate de-averaging, there
11 should be no controversy about Cox's recommendation. No evidence has been provided
12 by Verizon that it is asking the Commission to change this policy.

13
14 **Q. Does rate de-averaging have implications for universal service?**

15 A. Yes. One of the tenets underlying universal service is the ability for customers to obtain
16 comparable services at reasonable comparable rates. On its own, rate de-averaging
17 would appear to be a deviation from this tenet. Therefore, to ensure the continuation of
18 universal service, which is a long standing policy for state and federal regulators, rate de-
19 averaging should be closely monitored by the Commission.

20
21 **Q. On page 4, lines 8-10 of the Kenney Rebuttal, the witness further suggests Cox's**
22 **recommendation would be a re-write of the anti-discrimination provisions in Title**
23 **39 of the General Laws? Do you agree?**

24 A. No. To the contrary, Cox's recommendation that the Commission enforce its existing
25 policy regarding rate de-averaging as stated in Order No. 3445 is consistent with the
26 existing laws.

1
2 **Q. On page 3, line 15 of the Kenney Rebuttal, the witness notes a rate of \$21.95 which**
3 **he alleges to be Cox's "uniform rate for residential service." Is his representation**
4 **correct?**

5 A. No. As clearly indicated in a footnote to the tariff, the \$21.95 rate includes a \$2.00 adder
6 for a "DA Optional Call Plan as detailed in Section 3.2.1."⁹ The actual uniform statewide
7 rate for residential service is \$19.95. Customers can choose whether to purchase the "DA
8 Optional Call Plan" or not. While Cox's tariff rate is irrelevant in this proceeding, this
9 error should be corrected for the record.

10
11 **Q. Mr. Vasington also discusses rate de-averaging in the Vasington Rebuttal on pages**
12 **10-13. Does his testimony provide any reason for the Commission to abandon its**
13 **past policy regarding rate de-averaging?**

14 A. No. In fact, his testimony suggests exactly the opposite. Mr. Vasington's rebuttal
15 testimony maintains that "there is a very strong likelihood Verizon would not seek any
16 further deaveraging in Rhode Island..."¹⁰ If Verizon is not planning to seek further rate
17 de-averaging, then it should not be concerned with memorializing the Commission's
18 current policy for de-averaging in the AFOR.

19
20 He goes on to suggest Cox has portrayed rate de-averaging as "sinister."¹¹ Cox has done
21 no such thing. In the past the Commission has held that further rate de-averaging will be
22 afford specific oversight and placed a specific burden on Verizon should additional rate
23 de-averaging be proposed. Cox supports the Commission's policy, and there is nothing

⁹ Refer to Cox Rhode Island Telcom, L.L.C. Rhode Island PUC Tariff No. I, Section 3.1.2 (2)(b).

¹⁰ Refer to Vasington Rebuttal, page 11, lines 2-3.

¹¹ Id, page 11, line 9.

1 sinister about the Commission's past practice. In the case of bundles, Mr. Vasington
2 suggested the Commission view the situation the same as customers, a position which
3 Cox supports.¹² The Commission's current practice for rate de-averaging does exactly
4 the same thing – it looks at the issue from the viewpoint of customers. Again, when
5 distilled, Cox and Verizon appear to agree on this issue. Cox is just requesting that the
6 current regulatory requirement be reflected in the AFOR.

7
8 **F. THE COMMISSION SHOULD ALLOW ANY PARTY TO REQUEST**
9 **A REVIEW OF VERIZON'S COST FLOOR CERTIFICATION**

10 Q. On page 2, lines 3-6 of the Kenney Rebuttal, the witness claims any Rhode Island
11 registered telecommunications provider can request the Commission investigate its
12 price floor certification. Does Cox agree?

13 A. Yes. It appears Mr. Kenney is adopting the recommendation made by Cox in Section H
14 of my direct testimony. In that Section, Cox recommended the Commission modify the
15 requirements in Section G of Exhibit A¹³ to allow validly registered telecommunications
16 providers to request an investigation of Verizon's self-certification that its reduced or
17 initial rates are not less than LRIC. Since it appears Verizon and Cox are in agreement
18 about the ability of any provider to request an investigation of the price floor, the
19 Commission should modify the language in the AFOR as proposed by Cox in my direct
20 testimony to avoid any confusion.

21
22

¹² Id, page 9, lines 12-13

¹³ Exhibit A to the Testimony of Theresa L. O'Brien on Behalf of Verizon New England Inc., d/b/a Verizon Rhode Island dated August 19, 2005 (Hereinafter referred to as "Exhibit A").

G. REFERENCES TO THE REGULATION OF COX (AND OTHER COMPETITORS)
AND ITS SERVICES IN THE VERIZON REBUTTAL TESTIMONY ARE
IRRELEVANT

Q. On page 9 lines 16-18 of the O'Brien Rebuttal, Ms. O'Brien mentions Cox's ability to offer bundles of services without Commission approval. Is Verizon proposing any application of its AFOR plan to Cox?

A. No. This proceeding specifically addresses an AFOR plan for Verizon. Any extension of Verizon's regulatory requirements to Cox would be inappropriate, especially through a regulatory framework proposed for Verizon. This proceeding has nothing to do with the regulation of Cox. Furthermore, as discussed earlier, Cox has not proposed the Commission exert its jurisdiction over interstate telecommunications services or services not regulated by the agency.

Q. On page 6, lines 14-16 of the O'Brien Rebuttal, the witness proposes all telecom competitors in the state be subject to the "same financial reporting statistics." Is her recommendation appropriate?

A. No. Once again, the purpose of this proceeding is to establish a new AFOR plan for Verizon, not to debate the appropriate level of reporting for competitors. Cox has not taken a position on the required level of reporting for Verizon, but Cox does believe any references to the level of reporting or regulation for Cox are irrelevant.

Q. Mr. Vasington, on page 11, line 15 – page 12, line 8, discusses cable television rates and the regulation of cable service by the FCC and local franchise authorities. Is

1 **the discussion of cable television rates and regulation relevant to Verizon's proposed**
2 **AFOR plan?**

3 A. There is no relevance. This proceeding is about the future (perhaps permanent)
4 regulatory framework for Verizon's intrastate telecommunications service. In particular,
5 the Commission is reviewing proposals for regulating Verizon's residential retail
6 regulated services, among other things. The Commission is unlikely to benefit from any
7 inferences from, or comparisons with, the status of competition and the regulatory
8 framework of video services.

9
10 Q. **On page 8, lines 8-12, Mr. Vasington mentions the test used by some on the cable**
11 **television industry to signify a competitive video market. Should this test be applied**
12 **to the local exchange service market?**

13 A. No. Mr. Vasington is comparing apples and oranges. It is completely inappropriate to
14 compare the competitive requirements in the cable television business to such
15 requirements in the local exchange marketplace. There is simply no benefit to be drawn
16 from this comparison, for the level of competition and regulatory framework of the video
17 and telecommunications markets are different.

18
19 Q. **Mr. Vasington mentions Cox is not subject to a price floor test.¹⁴ Should Cox be**
20 **subject to such a test?**

21 A. No. Again, this proceeding is addressing an AFOR plan for Verizon, the incumbent
22 provider.

23

¹⁴ Refer to Vasington Rebuttal, page 6, lines 13-15.

1 **Q. Mr. Vasington also suggests regulatory requirements imposed on just Verizon**
2 **advantage competitors and harm customers.¹⁵ Do you agree?**

3 A. No. One need look no further than the 1996 Telecommunications Act itself to find
4 evidence that Congress understood the market power of incumbents and the importance
5 of treating incumbents like Verizon differently than competitors to enable competition to
6 develop to the benefit of consumers. In addition, the past practices of the FCC and this
7 Commission which established different requirements for incumbents, have been
8 designed to foster competition. As long as competition is allowed to flourish, customers
9 will benefit. Policies which deviate from this practice could lead to backsliding and the
10 potential for a remonopolization of local exchange telephone service.
11

12 **Q. On page 22, lines 6-14 of the Vasington Rebuttal, the witness cites an excerpt from a**
13 **speech given by Jim Robbins, Cox's President and CEO. Does Cox have any**
14 **concerns with Mr. Vasington's reference to this excerpt?**

15 A. Yes. The portion of the speech cited by Mr. Vasington addressed the regulation of the
16 cable television or video market. In the sections which precede the excerpt, Mr. Robbins
17 discusses video products and competition in the video market. In the sections which
18 follow the excerpt, Mr. Robbins discusses the differential rules Verizon and other large
19 incumbent LECs have advocated for the video business. The regulation of the cable
20 television or video market has no relevance to the regulated retail residential (or business)
21 telecommunications market in Rhode Island.
22
23

¹⁵ Id, page 9, lines 19-21.

H. OTHER COMMENTS REGARDING
THE VERIZON REBUTTAL TESTIMONY

Q. In his discussion of predatory pricing, Mr. Vasington discusses the importance of “facilities-based competitors, including wireless, VoIP and Cox.”¹⁶ Are most VoIP providers “facilities-based?”

A. No. Most VoIP providers are non-network based companies which rely on end-user customers’ existing broadband facilities to provide service. In many cases, the required broadband facility will be DSL service provided by Verizon itself. These carriers using VoIP technology have few, if any, facilities of their own provisioned to end-user customers’ premises. Therefore, it is incorrect to characterize most VoIP providers as “facilities-based.”

Q. Do you have any comments regarding Mr. Vasington’s discussion about wireless carriers?

A. Yes. Mr. Vasington characterizes wireless as a facilities-based competitor for Verizon. While wireless carriers do own significant facilities, wireless service is not a direct competitor to Verizon for residential regulated retail local exchange services, especially POTs. For most customers, wireless is a compliment to their wireline service, not a replacement. In keeping with Mr. Vasington’s theme of viewing matters through the eyes of the customer, the Commission should recognize the way customers view potential alternatives, not Mr. Vasington’s view. Furthermore, Mr. Vasington fails to point out that Verizon’s affiliate, Verizon Wireless, is a large wireless company, which under Mr. Vasington’s point of view, would be a competitor to Verizon itself. However, as I noted earlier, Verizon has a tariffed bundle which includes a discount for customers which

¹⁶ Id, page 4, line 9.

1 subscribe to ONEBILL with Verizon Wireless. Therefore, it appears at least the
2 Marketing people at Verizon perceive wireless as complimentary to wireline service in
3 the manner as most customers.
4

5 **Q. Should the level of competition be the sole determining factor for the design of an**
6 **AFOR plan?**

7 A. No. As I noted in my direct testimony, Cox had not reviewed all of the details presented
8 by Verizon concerning the level of competition in Rhode Island. While it is helpful for
9 the Commission to understand the potential sources of competition in the state,
10 competition by itself should not dictate the format of Verizon's AFOR plan. The
11 Commission has a responsibility to ensure both customers and the competitive
12 marketplace are protected from the abuse of market power. As I demonstrated in my
13 direct testimony, the level of competition is not the only factor which determines the
14 extent of Verizon's market power.
15

16 **Q. One of the factors you mentioned in your direct testimony, which Mr. Vasington**
17 **discusses, is the high economic cost of market entry. On page 16, lines 5-12 of the**
18 **Vasington Rebuttal, he disagrees with your contention that the 1996**
19 **Telecommunications Act did not remove the economic barriers to market entry.**
20 **Please clarify your position?**

21 A. The 1996 Telecommunications Act opened the local exchange service to competition
22 from a legal standpoint. Among other things, it established requirements for
23 interconnection, the sale of incumbent local exchange carrier unbundled network
24 facilities at cost based rates, and the sale of services at discounted wholesale rates (i.e.,
25 resale). The 1996 Act did not reduce the high cost of switching, feeder or distribution
26 facilities, and it could be argued that the two latter policies have utterly failed in

1 establishing competitive alternatives after years of litigation spearheaded by Verizon and
2 other ILECs. Further, the Act did not eliminate the high prices associated with customer
3 care and billing systems and call centers. I have previously mentioned that wireless
4 service is not really a competitor in the eyes of many end-user customers, though no one
5 should dispute that it has taken significant capital expense for even these networks to
6 build out their facilities and eliminate capacity constraints. As for VoIP-based services,
7 these are not generally facilities-based. Finally, the only other facilities-based
8 alternatives mentioned by Mr. Vasington are cable telephony providers such as Cox.
9 However, cable telephony companies have made and must continue to make significant
10 investments to build and sustain their networks. Mr. Vasington does not debate the
11 expensive nature of facilities used to provide telecommunications services. It is
12 inappropriate for Mr. Vasington to suggest the presence of limited competitive network
13 facilities has removed the economic barriers to entry.

14 **Q. You mentioned earlier that the proposed AFOR would extend the current Verizon**
15 **AFOR plan from business services to residential services. Verizon claims it has**
16 **three-years of experience in Rhode Island with pricing flexibility in the business**
17 **market with no evidence of using such flexibility in an anti-competitive manner.**
18 **Why would the expansion to the residential regulated retail market be significant?**

19 **A.** Pricing flexibility in the business market has been in place for many years in one form or
20 another. For many years business rates were set above cost to provide a subsidy to keep
21 residential rates low. As pricing flexibility developed in the business market, in most
22 cases rates started out above cost and were adjusted to meet market conditions. Pricing
23 flexibility for residential services began with optional services such as toll, calling
24 features and other non basic services which for the most part were priced above cost.
25 Now the AFOR plan would provide significant pricing flexibility to the most basic
26 residential regulated retail services. However, unlike services which have previously

been allowed pricing and other regulatory flexibilities, these services are not priced above cost in many markets. Therefore, the Commission must act more cautiously to ensure below-cost pricing for residential services is not used as an anti-competitive mechanism. The current practices of Verizon with regulatory flexibility in the business market are not necessarily predictive of future tactics for residential and business services.

Q. Ms. O'Brien claims the Commission should not impose reporting requirements on Verizon which are not required of competitive telecommunications providers.¹⁷ How does Cox recommend the Commission address reporting requirements?

A. Cox is not opposed to the specific changes to Verizon's reporting requirements which have been proposed by Verizon as long as the Commission continues to have the ability to request information about Verizon's operations on a case by case basis when necessary. However, Cox does not believe additional reporting requirements for competitors are necessary nor should competitors be saddled with reports which are eliminated for Verizon. Furthermore, any references to the reports which Cox must currently submit are largely irrelevant to the determination of reporting requirements for Verizon. At a minimum, the Verizon AFOR plan is not the appropriate proceeding to make any changes to the reports required of Verizon's competitors unless it is to eliminate reports for competitors which are no longer required of Verizon.

CONCLUSION

O. Does this conclude your Surrebuttal Testimony?

A. Yes.

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¹⁷ Refer to the O'Brien Rebuttal, page 6, lines 3-7.

VERIZON NEW ENGLAND INC.

**Rates and Charges Effective In
THE STATE OF RHODE ISLAND**

PUC RI No. 15

Verizon New England Inc.

1. Tariff Information and General Regulations
1.10 Promotional Programs

| 1.10.1 General | |
|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A. | Promotional programs may be introduced from time to time, as market conditions warrant, following advance notification to the PUC. The time periods, locations, tracking plans and terms and conditions applicable to each promotional program are provided to the PUC at the time of notification. |
| 1. | Such programs may include, but are not limited to, discounts, reductions or waivers of the appropriate rates and/or charges for the services provided. |
| B. | Implementation of proposed promotional programs will occur as specified in the notice to the PUC and following the resolution of any objections or concerns raised by the PUC. |